COURT OF APPEALS NO. 48698-9-II

IN THE COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of

ROYAL M. FISH, SR.,

Appellant/Cross-Respondent,

and

LISA ANNE FISH,

Respondent/Cross-Appellant.

REPLY BRIEF OF APPELLANT/CROSS-RESPONDENT

C. Nelson Berry III
WSBA No. 8851
Attorney for Royal Fish
Appellant/Cross-Respondent

Berry & Beckett, P.L.L.P.
1708 Bellevue Avenue
Seattle, Washington 98122
(206) 441-5444

Table of Contents

Table of Authorities

Cases

Statutes

I. REPLY TO RE-STATEMENT OF THE CASE

At the risk of being redundant, when Royal retired from the Navy in 1998, the Department of Veterans Affairs (V.A.) rated him at 60% disabled. 1/04/2016 RP 73, 85, 94.

Royal suffers from (1) Multilevel Degenerative Disc Disease and Degenerative Arthritis of the lumbar spine, (2) Osteoarthritis Bilateral Hips, and (3) Degenerative Joint Disease in his knees. 1/04/2016 RP 94-95, 104-105.

In 2000 or 2001, after Royal developed Transverse Myelitis at the T 10 spinal level, 1/04/2016 RP 95-96, the V. A. rated him at 90% disabled. 1/04/2016 RP 28, 73, 96, 155-156; CP 824-825, 912.

These are all degenerative diseases that get worse over time. 1/04/2016 RP 98-99, 115,156.

When the parties' separated, Royal was working on a contract basis with BayWest, LLC, as its Quality Control and Explosive Safety Officer, and as an unexploded Ordnance Technician, under its task order at Eglin Air Force Base, in Florida. 1/04/2016 RP 96-97.

As previously discussed, given the fact that this was a long term marriage (i.e. more than 25 years), and applying the mandate

of *In re Marriage of Rockwell*, 157 Wash.App. 449, 452, 238 P.3d 1184 (2010), when Lisa moved for temporary orders, the court granted temporary maintenance to Lisa in which it equalized the parties' net incomes. CP 900, 915; 01/04/16 RP 29-31.

Again, applying the mandate of *In re Marriage of Rockwell*, *supra,* when the parties mediated a settlement of their dissolution proceeding, they agreed that Royal would pay maintenance to Lisa in an amount which would equalize their incomes, based on what their incomes were at that time. CP 836, 841; 01/04/16 RP 96.

This maintenance obligation was based on the current earnings of the parties, CP 835, with the intent to "put the parties in roughly equal financial positions for the rest of their lives."[1] 1/04/2016 RP 97-99, 158; CP 814, 822, 825.

When the Decree of Dissolution was entered, Royal had been working fifty (50) hours per week. 1/04/2016 RP 99. His maintenance obligation of $3800 per month was based on what he was earning at that time. 1/04/2016 RP 153-154; CP 314, 332, 815.

---

[1] It did not include Royal's *per diem* because Royal's *per diem* were not earnings. Also, Royal was entitled to receive a *per diem* to reimburse him for his additional living expenses *only* when he was working in Florida while residing in Washington. When Royal's residence changed to Florida, after the Bremerton house sold, he no longer received a *per diem.* 01/04/16 RP 32-33, 126, 158-159.

Royal's military retirement income had been divided equally between the parties as an asset (but included as additional maintenance until the Order for Division of Military Retirement was processed by DFAS). CP 314; 330-331.

Both parties recognized that Royal's earnings were based on government contract work, and unless renewed, would end when his work under that contract ended. 01/04/16 RP 39, 98; CP 814. They also both recognized that Royal's health condition was degenerative and likely to get worse over time. 01/04/16 RP 35, 97-99. Accordingly, Paragraph 3.7 of their Decree of Dissolution, entered on June 13, 2014, CP 333 provided in pertinent part:

> Spousal maintenance may be reviewed earlier upon either party's loss of their employment income whether occurring as a result of involuntary loss of employment or for medical reasons with such circumstances constituting a substantial change of circumstance allowing said review.

See also, CP 314.

Royal's employment income ended as a result of his involuntary loss of employment when the field work he was performing as part of Bay West's task order was completed on Friday, December 5, 2014. 1/04/2016 RP 100-101; CP 158-159;

CP 191-193, 885-886.

After waiting through the Christmas holidays to see if Bay West might have another job for him, Royal initiated this Petition for Modification on January 21, 2015, based on his involuntary loss of employment and employment income. CP 4, 801.

The evidence was undisputed that this was an involuntary loss of Royal's employment and employment income. 1/04/2016 RP 157; CP 158-159, 192-193, 203, 834-835, 885-886.

In his Petition for Modification, Royal asked the Court to order Lisa to pay him maintenance to "put the parties in roughly equal financial positions for the rest of their lives." CP 5.

Additional facts will be presented as they become relevant to the issues raised on review.

II. ARGUMENT

A. The Court Abused Its Discretion By Commencing The Modification When Royal Raised The Issue Of His Inability To Work Due To Medical Reasons, And Awarding Her A Judgment For Back Maintenance.

Royal initiated this Petition for Modification on January 21, 2015, based on his involuntary loss of employment and employment income on December 5, 2014. CP 4, 801.

His maintenance obligation was based on the current

earnings of the parties. CP 835.

The evidence was undisputed that this was an involuntary loss of Royal's employment and employment income. 1/04/2016 RP 157; CP 158-159, 192-193, 203, 834-835, 885-886. This was not a finding that turned on Royal's credibility.

Accordingly, the trial court abused its discretion by not making an express finding that Royal had involuntarily lost his employment and employment income on December 5, 2014.

Nonetheless, it is true that Royal's health situation continued to deteriorate, 1/04/2016 RP 103-106, 127. As a result, Royal had his health condition re-evaluated. 1/04/2016 RP 107. And he did notify the court and Lisa in June of 2015, that he could not find other employment due to medical reasons, after his doctor had advised him that he would "not be able to work in any capacity in the future" and that he was "permanently disabled," CP 825, 835.[2]

But his medical disability was not the basis upon which he brought his Petition for Modification. His medical disability was the

---

[2] Royal's long term disability insurance through Bay West ended on March 5, 2015, before he learned he was permanently disabled. CP 193. Lisa testified at trial, that the Protective Term Life Insurance Policy, which only took effect on his death, was removed from the CR 2A agreement. 01/04/16 RP 34.

reason he could not return to gainful employment.

Since Royal's medical disability was not even alleged as a reason he sought to modify his maintenance obligation, it was an abuse of the trial court's discretion to commence the modification based on when he *notified* Lisa and the court of his medical disability. CP 215.

But, even if Royal had alleged that his medical disability was a basis for his Petition for Modification, the date he became medically disabled, not the date of notification, would have been the proper date to commence the modification.

Coincidently, the Social Security Administration found that Royal was 100% disabled, and thus unable to work as of December 5, 2014. 1/04/2016 RP 111, 116; CP 776. The trial court accepted this finding. 02/19/2016 RP 10-11, CP 220. Lisa does not contest it. It is thus a verity on appeal. *Cowiche Canyon Conservancy v. Bosley,* 118 Wash.2d 801, 808, 828 P.2d 549 (1992).

Thus, under either of these scenarios, December 5, 2014 would have been the appropriate date to commence the modification, but for the fact that RCW 26.09.170(1) provides in relevant part:

> Except as otherwise provided ... the provisions of any decree respecting maintenance or support may be modified:(a) Only as to installments accruing subsequent to the petition for modification....

Accordingly, the modification of Royal's maintenance payments could not commence before he brought his Petition for Modification on January 21, 2015---and that was the date his modification should have commenced.

But, based on the commencement date of June, 2015, the court found that Royal owed Lisa maintenance from December 2014 through May of 2015.

As previously briefed, Royal did pay maintenance for the month of December, 1/04/2016 RP 130, CP 829, contrary to the court's finding. Thus, the trial court's finding that Royal did not pay maintenance for December, 2014 is not supported by substantial evidence.[3]

Moreover, since the modification should have commenced on January 21, 2015, the judgment for nonpayment of maintenance

---

[3] Notwithstanding the court's oral ruling, the Court's Order on Show Cause re Contempt/Judgment reflects a judgment for nonpayment of maintenance from January 1, 2015 through May 31, 2015. CP 234.

from January 1, 2015 through May 31, 2015, CP 234, should be vacated and set aside.

B. Royal Should Not Have Been Found In Contempt.

The trial court also found that Royal had the ability to pay Lisa maintenance from December 2014 through May 31, 2015, and that he was thus in contempt for failing to pay her maintenance during this period of time, CP 222. These findings are not supported by substantial evidence.

The purpose of a civil contempt sanction is to coerce future behavior that complies with a court order. *King v. Department of Social & Health Servs.,* 47 Wash.App. 816, 821-24, 738 P.2d 289 (1987). Thus, the inability to comply with a child support or spousal maintenance order is a valid defense to contempt.

In *Britannia Holdings Ltd. v. Greer*, 127 Wash.App. 926, 933-934, 113 P.3d 1041(2005), the Court held:

> It is well settled that "'the law presumes that one is capable of performing those actions required by the court ... [and the] inability to comply is an affirmative defense.' " But exercise of the contempt power is appropriate only when "*the court finds* that the person has failed or refused to perform an act that *is yet within the person's power to perform.*" Thus, a

> threshold requirement is a finding of *current* ability to perform the act previously ordered.

RCW 26.18.050(4) states:

> If the obligor contends at the hearing that he or she lacked the means to comply with the support or maintenance order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court's order.

As previously briefed, Royal was medically disabled, as of December 5, 2014, and was thus precluded from seeking new employment. 1/04/2016 RP 111, 116; CP 776. There was no evidence that he had failed to conserve assets, or that he acted in any way which compromised his ability to render himself able to comply with the court's order.

His maintenance obligation was based on the current earnings of the parties. CP 835. As previously briefed, after Royal involuntarily lost his employment and his employment income on December 5, 2014, he has had no earnings.

His only income was his $750.00/month in military retirement income which had been awarded to him as an asset in the Decree of Dissolution, CP 314; 330-331, and his disability income in the

amount of $1857.34/month, totaling $2,607.34 per month. CP 845.

His monthly expenses were $3,590.44. CP 807-811.

Royal's income---much less, his earnings---was thus not sufficient to meet his monthly expenses, CP 364-368, 815, or to pay maintenance of $3,800 per month.1/04/2016 RP 106.

Nor, as previously briefed, did Royal have sufficient other assets or financial resources which could have been used to pay maintenance, and his monthly living expenses. His Bank of America bank records show that his beginning checking account balance as of December 30, 2014 was only $3,376.22. CP 502. His savings account balance was $233.46. CP 506.

His NFCU Bank statements show that his beginning balance on December 27, 2014 for both his checking and savings accounts was $1,363.86. CP 610.

Royal's use of any other assets to pay maintenance would have constituted impermissible "double-dipping". *In re Marriage of Barnett,* 63 Wash. App. 385, 818 P.2d 1382 (1991); *In re Marriage of Mathews*, 70 Wn.App. 116, 124-125, 853 P.2d 462 (1993).

His military retirement income had been divided equally between the parties as an asset (but included as additional maintenance until the Order for Division of Military Retirement was

processed by DFAS). CP 314; 330-331. Accordingly, it was not available to pay maintenance.

The net sale proceeds of $53,062.19 which Royal was wired on January 13, 2015 was from the sale of a lot in Belfair he had been awarded in the Decree of Dissolution. CP 330, 506; 1/04/2016 RP 118-119, and thus was also not available to pay maintenance.

Similarly, Royal's bonus, his accrued vacation pay, and his income tax refund, 1/04/2016 RP 101-102, 119-120, 155, 835; CP 338, all came from earnings which had been previously used to pay maintenance to Lisa in 2014, and thus were not available to be used to pay maintenance again.

Accordingly, the trial court's findings in the Order on Show Cause re Contempt/Judgment, Paragraph 2.4 **Past Ability to Comply With Order,** which states:

> *ROYAL FISH had the ability to comply with the order as follows:*
>
> Royal Fish had the ability to comply with the order as follows, as set forth in the verbatim report of proceedings of the decision of the Honorable Jennifer A. Forbes, Kitsap County Superior Court dated January 15, 2016, is attached as **Exhibit "B"** and incorporated herein by this reference, as though fully set forth herein.

> Royal Fish had funds with which to pay spousal support and willfully and intentional [sic] failed to pay spousal support to Lisa Fish...

is not supported by substantial evidence.

Likewise, the trial court's finding in the Order on Show Cause re Contempt/Judgment, Paragraph 2.5 **Present Willingness and Ability to Comply With Order** which states in pertinent part:

> *ROYAL FISH has the present ability to comply with the order as follows:*
>
> Royal Fish has sufficient financial resources to pay spousal maintenance owed to Lisa Fish in the total amount of $19,000 plus accrued interest. (See **Exhibit B,** as though fully set forth herein)...

is also not supported by substantial evidence.

Accordingly, in the absence of impermissible "double-dipping", Royal did not have the "*current* ability to perform the act previously ordered". *Britannia Holdings Ltd. v. Greer, supra.*

The finding of contempt must be reversed and set aside.

C. The Court Erred And Abused Its Discretion By Refusing To Award Royal Maintenance From January 2015 through May 2015.

The essential holding of *In re Marriage of Rockwell*, 157

Wash.App. at 243, is:

> In dissolving a marriage of 25 years or more, the trial court must put the parties in roughly equal financial positions for the rest of their lives. [emphasis added].

The Decree of Dissolution required Royal to pay Lisa maintenance in the amount of $3,800 per month. CP 314, 332. This maintenance obligation was based on the current earnings of the parties, CP 835, with the intent to "put the parties in roughly equal financial positions for the rest of their lives." 1/04/2016 RP 97-99, 158; CP 814, 822, 825.

When Royal involuntarily lost his employment and his employment income on December 5, 2014, he filed his Petition for Modification on January 21, 2015, CP 3-8, in which he requested that the court require Lisa to pay maintenance to him. CP 5.

Royal's only income was his disability income in the amount of $1857.34/month, not including the $750 per month in military retirement income which had been awarded to him as an asset in the Decree of Dissolution, CP 314; 330-331. Even with the inclusion of his military retirement income, his income was not sufficient to meet his monthly expenses of $3,590.44. CP 364-368.

On the other hand, Lisa's gross monthly income was

$4,583.33, not including the $750 per month in military retirement income, CP 60, which had been awarded to her as an asset in the Decree of Dissolution, CP 314; 330-331.

Thus, to equalize the parties' gross monthly incomes, Lisa should have been ordered to pay temporary maintenance to Royal in the amount of $1,362.995 or $1,363 per month from January, 2015 until June1, 2015 when the Social Security Administration awarded Royal an additional disability payment of $2,185 per month (even though Royal did not actually receive those payments until late August, 2015), 1/04/ 2016 RP 114, thereby substantially reducing the disparity between the parties' gross monthly incomes.

Lisa contends that it "was within the discretion of the court to not award Royal maintenance partly because Royal and Lisa have roughly [the same?] economic condition". But they did not have roughly the same economic condition, until after Royal began receiving the additional disability payment from the Social Security Administration in late August, 2015.

Lisa's reliance on *In re Mariage of Kike*, 186 Wash.App. 864, 887, 347 P.3d 894 (2015) for the proposition that *In re Marriage of Rockwell, supra,* concerned *only* the just and equitable division and distribution of property under RCW 26.09.080, and not entitlement

to spousal maintenance, is misplaced.

While maintenance was not at issue in R*ockwell, supra*, the Court in *In re Marriage of Kike*, 186 Wash.App. at 887, explained why *Rockwell* did not mandate an award of maintenance in that particular case:

> And RCW 26.09.090 clearly makes an award of maintenance discretionary, not mandatory. Here, the trial court awarded Mr. Kendall almost $650,000, including 80 percent of the parties' community property—an award in his favor that is even more disproportionate (had the property been correctly characterized) than the shifting of property value that was at issue in *Rockwell.* Mr. Kendall fails to demonstrate an abuse of discretion by the trial court.

But the Court in *In re Marriage of Kike*, 186 Wash.App. at 887 did **not** hold or imply that it was inappropriate to award maintenance to accomplish the *Rockwell* objective. To the contrary, it held:

> That being said, a trial court is not only permitted to consider the division of property when deciding whether to award maintenance, it is required to do so. [citation omitted]. Since we are reversing the trial court's separate property characterization of certain assets and remanding the property division, the trial court has the authority to revisit its decision on maintenance in arriving at a

revised and just distribution of property. [emphasis added].

Maintenance is an appropriate mechanism, in addition to property distribution, to achieve the objective in a long-term marriage to "place the parties in roughly equal financial positions for the rest of their lives." See, for example, *In re Marriage of Wright*, 179 Wash. App. 257, 262, 319 P.3d 45 (2013)("if the spouses were in a long-term marriage of 25 years or more, the court's objective is to place the parties in roughly equal financial positions for the rest of their lives. To reach this objective, the court may account for each spouse's anticipated post-dissolution earnings in its property distribution by looking forward.").

The lower court's failure to award Royal maintenance from January 2015 until June 2015 constitutes error and an abuse of its discretion.

D. The Court Erred And Abused Its Discretion By Suspending Rather Than Terminating Royal Fish's Maintenance Obligation.

As previously briefed, the trial court abused its discretion by suspending, rather than terminating, Royal's obligation to pay maintenance, and retaining jurisdiction on the issue, CP 2232-2233, in the absence of any evidence that Royal has any ability to

resume working. *In re Marriage of Drlik*, 121 Wash.App. 269, 279, 87 P.3d 1192(2004).

After Royal lost his employment, he was re-evaluated. The Department of Veteran's Affairs, CP 835, and the Social Security Administration both found that he was 100% disabled and unable to work as of December 5, 2014. CP 776.

These determinations were not based on Royal's credibility. As previously discussed, the trial court accepted the finding by the Social Security Administration. 02/19/2016 RP 10-11, CP 220. Lisa did not challenge it. It is thus a verity on appeal. *Cowiche Canyon Conservancy v. Bosley, supra.*

There was no evidence to support the trial court's suspicions that she did not "really believe that Mr. Fish can't work" and did not "really believe that Mr. Fish is not going to not work", CP 223, based on its unsupported belief that "there was a potential that he would go back to work", CP 224, since Royal's permanent disability had been established by the Social Security Administration as of December 5, 2014, CP 776.

In the absence of any evidence to support such beliefs, one is left with the conclusion that the court's beliefs are based on prejudice, or its perception of "fault", which are prohibited factors in

considering maintenance. RCW 26.09.090; Compare, *In re Marriage of Muhammad,* 153 Wash.2d 795, 108 P.3d 779 (2005).

Since the evidence in the record does not support the trial court's suspicions, the trial court erred in ordering an indefinite suspension of maintenance, rather than terminating that obligation. *In re Marriage of Drlik, supra.*

E. Royal Was Not Intransigent.

Contrary to Lisa's allegation, the court below did not find that Royal was intransigent.

In *Marriage of Crosetto*, 82 Wash.App. 545, 564, 918 P.2d 954 (1996), the Court found that Laurel Crosetto had engaged in intransigence, even though the court below did not make an express finding of intransigence, where "a review of the record discloses a continual pattern of obstruction on Laurel Crosetto's part." In this case, there is no such "continual pattern of obstruction" on Royal's part.

Instead, Lisa relies upon the lower court's comments about Royal's credibility, which were based on its confusion as to why Royal had premised his petition for modification on his involuntary loss of employment and employment income, and then subsequently introduced evidence of his medical disability which

precluded him from returning to gainful employment, CP 219-220.

As previously explained in the Opening Brief, since Royal testified that he hoped to be rehired after being terminated from his job, the court below found that Royal was not "credible". According to the court, CP 220-221:

> Interestingly, Mr. Fish had taken the position early on or in his testimony ---which was somewhat contradictory, which is one of the reasons his credibility is hard for me to accept--- that when he no longer was working at his place of employment that he would---didn't go and seek benefits because he thought he would get rehired, so then he filed a petition saying he can't work. So I don't really find it believable that he truly was not able to find employment; however, his disability, I think has been established.

The court, however, was mistaken. Royal did not file a petition for modification "saying he can't work". Rather he alleged that he had "lost his employment income as a result of an involuntary loss of employment", which was a substantial change of circumstances, as provided in Paragraph 3.7 of the Decree of Dissolution. CP 4.

After filing his petition, Royal was re-evaluated, and it was determined that he was 100% disabled and unable to work.

CP 825, 835. The Social Security Administration then found that he had been disabled since December 5, 2014, CP 776, the same day he had lost his job with Bay West.

But, whether Royal could find employment *after* he involuntarily lost his employment and employment income on December 5, 2014, is immaterial. That was not the basis for his modification. The fact that the Social Security Administration subsequently found that he was disabled and could not work as of that same date, CP 776, was the reason he could not find employment *after* he involuntarily lost his employment and employment income.

These were not facts based on his credibility. 2/19/2016 RP 8-9; CP 216, 221.

The lower court's confusion as to why Royal did not immediately seek benefits after he lost his employment because he had hoped be rehired, and only later found that his medical disability precluded him from returning to gainful employment, coupled with the court's mistaken view about what Royal alleged in his petition for modification, do not support the court's finding that Royal was not a "particularly credible person", CP 220.

Nor does it support a finding of intransigence.

Lisa also claims that "voluntary underemployment is grounds for a finding of intransigence". But there is no evidence---much less, a finding--- of voluntary underemployment.

She also asserts that "intransigence includes 'incremental disclosure of income' and less than candid portrayal of contract termination with employer." But, once again, there is no evidence---much less a finding---that Royal only incrementally disclosed his income, or provided anything but a candid portrayal of his contract termination with his employer.

In sum, there is no evidence, and Lisa identifies none, which shows that she required any "additional legal service" because of anything inappropriate which Royal did or failed to do.

Her claim of intransigence is frivolous.

F. Lisa's Claim That Royal's Petition To Modify Maintenance Was Frivolous Is Frivolous.

Lisa asserts that the trial court abused its discretion by not awarding her attorney fees and costs, pursuant to RCW 4.84.185, because Royal's Petition for Modification of his maintenance obligation was frivolous.

Since the trial court granted Royal's Petition for Modification, CP 232-233, her allegation to the contrary is itself frivolous.

G. Lisa's Claims On Appeal Are Frivolous.

In *Mahoney v. Shinpoch,* 107 Wash.2d 679, 691-692, 732 P.2d 510 (1987), the Washington Supreme Court held:

> The rules of appellate procedure permit an award of attorney fees to a prevailing respondent in a frivolous appeal. *Boyles v. Department of Retirement Sys.,* 105 Wash.2d 499, 508–09, 716 P.2d 869 (1986); *see* RAP 18.9(a). An appeal is frivolous when there are no debatable issues upon which reasonable minds could differ and when the appeal is so totally devoid of merit that there was no reasonable possibility of reversal. *Boyles,* at 509, 716 P.2d 869. The record should be examined as a whole, and doubts should be resolved in favor of the appellant. [citation omitted].

When the record is examined as a whole, and doubts are resolved in her favor, Lisa raises no debatable issues upon which reasonable minds could differ. Her appeal is so totally devoid of merit that there is no reasonable possibility of reversal, *Mahoney v. Shinpoch,* 107 Wash.2d 679, 691-692, 732 P.2d 510 (1987).

Royal should be awarded his reasonable attorney fees and costs in being compelled to respond to Lisa's frivolous claims on appeal, pursuant to RAP 18.9(a).

III. CONCLUSION

For each of the foregoing reasons, this Court should reverse the court below, and hold that:

1. The modification/termination of Royal's maintenance obligation should have commenced when he filed his petition for modification, on January 21, 2015, and vacate the judgment for unpaid maintenance owed to Lisa from January, 2015 until June1, 2015 ;

2. Royal did not have the ability to comply with his maintenance obligation of $3,800 per month after December 5, 2014, and accordingly, should not have been found in contempt for failing to do so;

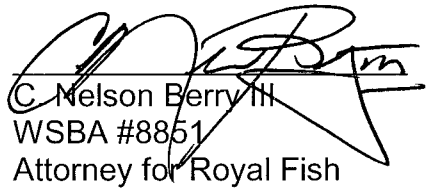
3. Lisa should have paid temporary maintenance to Royal in the amount of $1,363 per month from January, 2015 until June1, 2015 when the Social Security Administration awarded Royal an additional disability payment ---even though Royal did not receive these additional payments until late August, 2015, 1/04/ 2016 RP 114, to put these parties in "roughly equal financial positions", for that time period. *In re Marriage of Rockwell*, 157 Wash.App. at 243;

4. In the absence of any evidence that Royal could ever return to gainful employment, the court should have terminated his

obligation to pay maintenance rather than merely suspending it; and

5. Royal should be awarded his reasonable attorney fees and costs on appeal for being compelled to respond to Lisa's frivolous claims on appeal, pursuant to RAP 18.9(a).

Respectfully submitted this 9th day of September, 2016.



C. Nelson Berry III
WSBA #8851
Attorney for Royal Fish
Appellant/Cross-Respondent

CERTIFICATE OF SERVICE

I certify that on the 9th day of September, 2016, I caused a copy of the foregoing Appellant/Cross-Respondent's Reply Brief to be mailed by first class mail, postage prepaid, to the Respondent/Cross-Appellant at the following address:

Lisa Anne Fish
3501 Rodgers St.
Bremerton, Washington 98312

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 9th day of September, 2016, at Seattle, Washington.

C. Nelson Berry III
WSBA #8851
Attorney for Royal Fish
Appellant/Cross-Respondent